

9 FAM 41.55

ALIENS WITH EXTRAORDINARY ABILITY

(CT:VISA-2174; 09-16-2014)
(Office of Origin: CA/VO/L/R)

9 FAM 41.55 RELATED STATUTORY PROVISIONS

(CT:VISA-2174; 09-16-2014)

See INA 101(a)(15)(O) (8 U.S.C. 1101(a)(15)(O)), INA 101(a)(46) (8 U.S.C. 1101(a)(46)), INA 214(a)(2)(A) (8 U.S.C. 1184(a)(2)(A)), and INA 214(c) (8 U.S.C. 1184(c)).

INA 101(a)(15)(O)

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens

(O) an alien who:

(i) has extraordinary ability in the sciences, arts, education,

business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability; or

(ii) (I) seeks to enter the United States temporarily and

solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III) (a) has critical skills and experience with such

alien which are not of a general nature and which cannot be performed by other individuals, or

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(b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing long-standing working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

(iii) is the alien spouse or child of an alien described in clause

(i) or (ii) and is accompanying, or following to join, the

alien;

INA 101(a)(46)

(46)The term "extraordinary ability" means, for purposes of subsection (a)(15)(O)(i) of this section, in the case of the arts, distinction.

INA 214(a)(2)(A)

(2)(A) The period of authorized status as a nonimmigrant described in section 101(a)(15)(O) shall be for such period as the Attorney General may specify in order to provide for the event (or events) for which the nonimmigrant is admitted.

INA 214(c)

(c)(1) The question of importing any alien as a nonimmigrant under 10a/ subparagraph (H) , (L) , (O) , or (P)(i) of section 101(a)(15) (excluding nonimmigrants under section 101(a)(15)(H)(i)(b1)) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection n with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a) , the term "appropriate agencies of Government" means the Department of Labor and includes the Department of Agriculture. The provisions of section 218 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a) .

(3) The Attorney General shall approve a petition-

(A) with respect to a nonimmigrant described in section 101(a)(15)(O)(i) only after consultation in accordance with paragraph (6) or, with respect to aliens seeking entry for a motion picture or television production, after consultation with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability, or

(B) with respect to a nonimmigrant described in section 101(a)(15)(O)(ii) after consultation in accordance with paragraph (6) or, in the case of such an alien seeking entry for a motion picture or television production, after consultation with such a labor organization and a management organization in the area of the alien's ability.

In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall only be advisory, (ii) any such opinion that recommends denial must be in writing, (iii) in making the decision the Attorney General shall consider the exigencies and scheduling of the production, and (iv) the Attorney General shall append to the decision any such opinion. The Attorney General shall provide by regulation for the waiver of the consultation requirement under s subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 101(a)(15)(O)(i) because of extraordinary ability in the arts and who seek readmission to perform similar services within 2 years after the date of a consultation under such subparagraph. Not later than 5 days after the date such a waiver is provided, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization.

9 FAM 41.55 RELATED REGULATORY PROVISIONS

(CT:VISA-2174; 09-16-2014)

See 22 CFR 41.55.

Section 41.55 Aliens with extraordinary ability.

(a) Requirements for O classification. An alien shall be classifiable under the provisions of INA 101(a)(15)(O) if:

- (1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and either

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- (2) With respect to the principal alien, the consular officer has received official evidence of the approval by DHS of a petition to accord such classification or of the extension by DHS of the period of authorized stay in such classification; or
 - (3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.
- (b) Approval of visa. The approval of a petition by DHS does not establish that the alien is eligible to receive a nonimmigrant visa.
- (c) Validity of visa. The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section.
- (d) Alien not entitled to O classification. The consular officer must suspend action on the alien's application and submit a report to the approving DHS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(O) is not entitled to the classification as approved.

[57 FR 31450, July 16, 1992; as amended at 61 FR 1833, Jan. 24, 1996; *71 FR 34519, June 15, 2006*]